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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/669,138	09/26/00	POLLOCK	F 006593-01868

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EXAMINER

ART UNIT PAPER NUMBER

3749
DATE MAILED:
08/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/669,138

Applicant(s)

POLLOCK ET AL.

Examiner

Jiping Lu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because the phrase "the invention is" used in the abstract is improper. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

3. Claims 1-10, 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "improved" in claims 1, 10 and 12, line 1 is a relative term, which renders the claims vague and indefinite.

Claims 1, 10 and 11, it is not clear the term "said cover" used in the claims is for the inner cap or for the outer cap.

Claim 12, it is not clear how the baffle assembly directs fluid away from the tank outlet since the baffle assembly is positioned over the tank inlet.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-2, 4, 8, 11-13, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Mayer et al. (U. S. Pat. 3,889,641).

Mayer et al. show a fluid heating tank comprising an inlet 19-20, an outlet 3 and a baffle assembly 11a-30. Said baffle assembly comprises an inner cap positioned over the inlet 19-20 including a cover 11a having openings (not numbered, connected to inlet 19,20) therein and an outer cap positioned over the inner cap including a cover 21 and having a flange 29 depending from said cover. The outer cap is spaced apart from the inner cap and supported by a support post 22.

6. Claims 1-2, 4, 7-8, 11-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Clarke (U. S. Pat. 6,199,515).

Clarke shows a fluid heating tank comprising an inlet with inlet pipe 2, an outlet (not show) and a baffle assembly 1. Said baffle assembly 1 comprises an inner cap positioned over the inlet 2 including a cover 4 having openings 15 therein and an outer cap positioned over the inner cap including a cover 5 and having a flange (not numbered, see Figs.3-5) depending from

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said cover. The outer cap is spaced apart from the inner cap and supported by a support post (at 16).

7. Claims 12-14, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Barmore (U. S. Pat. 5,092,279).

Barmore shows a fluid heating tank comprising an inlet 18 with inlet pipe (at 17), an outlet 20, and a baffle assembly 24. Said baffle assembly 24 comprises an outer cap 25 positioned over said inlet 18 and a water-diverting flange (not numbered, see fig. 4).

8. Claims 12-13, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Lyman et al. (U. S. Pat. 3,807,365).

Lyman et al. show a fluid heating tank comprising an inlet 35, an outlet 45, and a baffle assembly 26-29. Said baffle assembly 26-29 comprises an outer cap 29 positioned over said inlet 35 and a water diverting flange 26-27.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 3, 5-6, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (U. S. Pat. 3,889,641).

The fluid heating tank of Mayer et al. as above includes all that is recited in claims 3, 5-6, 10 except for the shape of openings and the caps. It would have been an obvious matter of design choice to design the openings and the caps with any desired shape in order to obtain the optimum result, since applicants have not disclosed that the trapezoidal and square shape solve any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (U. S. Pat. 3,889,641) in view of Barmore (U. S. Pat. 5,092,279).

The fluid heating tank of Mayer et al. as above includes all that is recited in claim 9 except for the outer cap is supported by brackets depending from a wall of the tank. Barmore shows a fluid-heating tank with a baffle assembly having outer cap 25 supported by brackets 46, 82 depending from a wall 84 of the tank same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the fluid heating tank of Mayer et al. with brackets as taught by Barmore in order to support the outer cap of the baffle assembly.

13. Claims 3, 5-6, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke (U. S. Pat. 6,199,515).

The fluid heating tank of Clarke as above includes all that is recited in claims 3, 5-6, 10 except for the shape of openings and the caps. It would have been an obvious matter of design choice to design the openings and the caps with any desired shape in order to obtain the optimum result, since applicants have not disclosed that the trapezoidal and square shape solve any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke (U. S. Pat. 6,199,515) in view of Barmore (U. S. Pat. 5,092,279).

The fluid heating tank of Clarke as above includes all that is recited in claim 9 except for the outer cap is supported by brackets depending from a wall of the tank. Barmore shows a fluid-heating tank with a baffle assembly having outer cap 25 supported by brackets 46, 82 depending from a wall 84 of the tank same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the fluid heating tank of Clarke with brackets as taught by Barmore in order to support the outer cap of the baffle assembly.

Conclusion


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jiping Lu whose telephone number is 703-308-2354. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise L. Esquivel can be reached on 703 308-2597. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703 308-7764 for regular communications and 703 308-7764 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.


Jiping Lu
Primary Examiner
Art Unit 3749

J. L.
August 26, 2001

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a)

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.